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MILLEN, WHITE, ZELANO &
BRANIGAN, P.C.
2200 CLARENDON BLVD., SUITE 1400
ARLINGTON, VA 22201

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OCT 27 2003

In re Application of
Schüle
Application No. 09/428,647
Filed: October 28, 1999
Attorney Docket No. SCH-1700

OFFICE OF PETITIONS

ON PETITION

This decision concerns the August 29, 2003 petition under 37 CFR 1.137(b).

The petition is **GRANTED**.

On March 8, 2002, a final Office action was mailed, setting forth a 3-month shortened statutory reply period.

A proposed amendment (Amendment B) filed on June 18, 2002 (Certificate of Mailing date June 10, 2002 [Monday]), as indicated in the August 13, 2002 Advisory Action, did not place the application in condition for allowance and was not entered. The Advisory Action pointed out that the period for responding to the March 8, 2002 final Office Action remained that set forth in that Office action.

However, a Notice of Appeal was filed concurrently with the June 18, 2002 proposed amendment. Accordingly, Applicant was permitted to file an appeal brief within 2 months of the June 18, 2002 filing date of the Notice of Appeal, i.e., on or before August 19, 2002 (Monday). This 2-month period was extendable under 37 CFR 1.136(a), by up to 5 more months, through January 21, 2003 (Tuesday), with January 20, 2003 (Monday) being a Federal holiday.

On October 10, 2002, in lieu of an appeal brief, Applicant filed another proposed amendment (Amendment C) (re-submitted by facsimile on December 17, 2002), along with a request for a 2-month extension of time and the extension-of-time fee. This proposed amendment was again not entered by the Examiner, as stated in the February 11, 2003 Advisory Action.

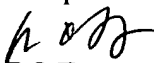
No appeal brief was filed on or before January 21, 2003, and no further extension of time was obtained. The application became abandoned on October 19, 2002.

The instant petition encloses a Request for Continued Examination (RCE) as reply to the March 8, 2002 final Office Action, and the \$750 RCE filing fee; an amendment as the RCE "submission" required by 37 CFR 1.114; and the \$1,300 petition fee. The petition also states in effect that the entire delay in filing a proper reply to the March 8, 2002 final Office Action from its due date until the filing of a grantable §1.137(b) petition was unintentional. The petition is thus granted.

The application is hereby revived for establishing continuity with the RCE.

The application file is being returned to Technology Center 1600 for further examination.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.


RC Tang
Petitions Attorney
Office of Petitions